

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 19-87 (WMW/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**TRIAL BRIEF OF  
THE UNITED STATES**

DAYTON GAGE LUSSIER,

Defendant.

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Gina L. Allery, Special Assistant United States Attorney, hereby submits its trial brief in the above-entitled matter.

**I. Trial Counsel**

The United States is represented by Gina L. Allery, Special Assistant United States Attorney, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415. Ms. Allery's email address is [gina.allery2@usdoj.gov](mailto:gina.allery2@usdoj.gov). Ms. Allery's telephone number is 612-664-5600.

**II. Length of Trial**

The United States anticipates that the length of trial to be 2-3 days. Thus, the trial should conclude no later than Wednesday, September 25, 2019.

### **III. Summary of the Facts**

The United States anticipates the evidence adduced at trial will prove the following facts:

On the evening of September 4, 2016, the defendant and some friends were gathered at the Mike Lussier residence on the Red Lake Indian Reservation for an evening of drinking alcohol. This group included Dominic Desjarlait, Clifford Johnson, Shalanna Neadeau, Kaylyssa Kailani Deanah White, and Aaliyah Ann May. At some point during the evening, an invitation went out to some additional individuals to join them at the Mike Lussier residence to drink alcohol with those already gathered there. This additional group invited over included Avery Lussier-Neadeau, Dwayne Spears III, and Jarrod White.

Avery Lussier-Neadeau is Kaylyssa Kailani Deanah White's ex-boyfriend. The defendant is Kaylyssa's cousin. At some point during the evening, Avery and his friends left the house and were waiting for a ride on the road. Avery returned from the road towards the house to talk to Kaylyssa. They spoke for a little while and Avery asked Kaylyssa to come with him – to leave the Mike Lussier residence with him. Kaylyssa told Avery that her mother would not allow her to go anywhere else that evening, so she could not join him. At this point, some of the others at the gathering asked Kaylyssa if she was ok and she responded that she was fine.

Avery again tried to get Kaylyssa to leave with him, but this time he grabbed her by both arms and attempted to pull her towards the road to leave. Kaylyssa jerked her arms away and again said she could not go. Defendant then came up behind Avery and hit him

on the head with a tire iron and knocked Avery to the ground. Kaylyssa got on top of Avery in an attempt to protect him from the defendant's further blows, but she was pulled off and defendant kicked and punched Avery again. Kaylyssa then ran into the house to call 911.

Officer Josh Wicker from the Red Lake Police Department responded to the Mike Lussier residence. Upon arrival, he observed Avery lying on the ground covered in blood and suffering from blunt force trauma to his head. Officer Wicker took photographs of Avery's injuries at the scene and assisted Red Lake Police Department Criminal Investigator Geoff Pierre, who also responded to the scene, in taking additional photographs of the crime scene and collecting evidence, including a bloody tire iron.

Avery was airlifted to the Sanford Hospital in Fargo, ND, for treatment that night due to the extent of his wounds. He could not remember what happened, but he was treated for a depressed skull fracture, for which he received a craniotomy, a laceration on his scalp and right arm, and a facial contusion.

On April 20, 2018, the defendant provided a statement to FBI Special Agent Mark Meyers and CI Geoff Pierre after being advised of his *Miranda* rights. In the approximately 10-minute statement, the defendant admitted that he hit Avery Lussier-Neadeau with a tire iron. Upon questioning, defendant stated that Avery was "talking shit" to him and Avery's friends were throwing rocks at him. Defendant denied drinking any alcohol on the day of the incident and denied that Dominic Desjarlait was present during the assault.

#### **IV. Potential Legal and Evidentiary Issues**

The government provides the following legal analysis concerning possible evidentiary issues at trial.

##### **A. Stipulations**

In an effort to streamline the issues for trial, the government proposes a stipulation regarding defendant's Indian status. Tribal records from the Red Lake Band of Chippewa Indians confirm the defendant is an enrolled member of the tribe.

##### **B. Evidence of Crimes, Wrongs, or Other Acts Pursuant to Fed. R. Evid. 404(b)**

The government did not notice and does not intend to offer evidence pursuant to Rule 404(b) of the Federal Rules of Evidence.

##### **C. Recorded Statement of the Defendant Provided to Law Enforcement on April 20, 2018**

The defendant provided an approximately 10-minute audio-recorded statement<sup>1</sup> to Special Agents Mark Meyers and Justin Montgomery of the FBI. At trial, the government intends to offer the audio-recorded statement. Defendant's recorded statement to law enforcement is admissible non-hearsay because it is the statement of a party opponent pursuant to Rule 801(d)(2)(A).

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<sup>1</sup> A copy of the audio-recorded statement and transcript will be provided to the Court in advance of trial.

#### **D. Transcripts**

In offering audio recordings of the defendant's statement to law enforcement, the government also seeks to use a transcript of the recording to assist the jury as it listens. Such a request is a matter within the sound discretion of the Court and is routinely granted. *See United States v. Frazier*, 280 F.3d 835, 849 (8th Cir. 2002); *United States v. McMillan*, 508 F.2d 101, 105 (8th Cir. 1974). Of course, the recordings themselves, not the transcripts, are the evidence of the conversations, and the government has included an appropriate limiting instruction in the parties' joint proposed jury instructions.

Dated: August 30, 2019

Respectfully Submitted,

ERICA H. MacDONALD  
United States Attorney

*s/Gina L. Allery*

BY: GINA L. ALLERY  
Special Assistant U.S. Attorney  
Attorney ID No. 485903 (D.C.)